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SUBJECT: PRESIDENT CIAMPI SENDS CONTROVERSIAL MEDIA REFORM  
BILL BACK TO PARLIAMENT

REF: ROME 5557

1. Summary: Italian President Ciampi declined to sign draft legislation reforming Italy's media sector December 15 and sent the bill back to Parliament. Ciampi cited technical legal conflicts and broader concerns about the legislation's potential constraints on media pluralism in a further-liberalized media sector. The President's action is an uncommon but by no means unprecedented detour in the legislative process. Berlusconi and his coalition partners must now decide either to send the legislation back to Ciampi as-is or, more likely, make some technical adjustments in Parliament to address Ciampi's legal points. We expect the broad reform measures included in the legislation eventually will be implemented, but Berlusconi will pay a steeper price than expected to again shepherd the reform bill through Parliament. For coalition partners looking ahead to a possible cabinet shuffle in January, Christmas may come a little early this year. End Summary.

#### Ciampi's Surprise

2. President Ciampi confounded most observers' predictions (including ours - reftel) by declining to sign the "Gasparri Law" (named for the communications minister) liberalizing further Italy's media sector, instead sending it back to Parliament on December 15. The legislation, approved by Parliament December 2 (reftel), eliminated distinctions among media properties (creating an "integrated communications system"), set a timetable for initial privatization of public broadcaster RAI and lifted limits on broadcast media holdings, restrictions on cross-ownership of media properties and caps on advertising spending. These provisions effectively legitimized Prime Minister Berlusconi's current media holdings and would have nullified a constitutional court decision directing one of Berlusconi's three broadcast networks to convert to digital transmission (in order to respect the cap on broadcast media holdings). Critics charged that the legislation would reinforce Berlusconi's dominance of Italian media, as did such organizations as Journalists Without Borders, and implored the President not to sign it.

3. In sending the "Gasparri Law" back to Parliament, Ciampi cited three principal concerns for his decision:

-- the conflict between the legislation's one year phase-in period, and a constitutional court decision requiring an assessment of pluralism in the media by the end of 2003;

-- the absence of a clear mechanism to correct any "deficiencies in pluralism" under the new media system that were identified by a watchdog commission; and

-- the potential for individual companies to create a "dominant position" absent caps on the percentage of revenue that broadcast media properties could earn from advertising. In this case, Ciampi is echoing concerns from print media that, absent advertising revenue caps, advertising will flood out of print media to broadcast outlets. This revenue shift would jeopardize many newspapers' bottom line and, therefore, reduce pluralism and undermine freedom of the press.

#### Government Regrouping For Interim Fix...

4. The Berlusconi Government reacted calmly, characterizing the President's decision as a normal feature of the legislative process, albeit one used only uncommonly. A small group drawn from the leadership of all four coalition members immediately began discussing options and plotting strategy for responding to Ciampi's decision. Essentially, the Berlusconi Government, via its parliamentary majority, has two choices:

-- send the legislation back to Ciampi, as-is and unmodified;

-- return the bill to the lower-house Chamber for adjustments to address at least some of the concerns that

Ciampi noted; after votes by both houses, the modified bill would then go back to Ciampi for signature.

Whichever route the Government elects to take, Ciampi must sign the law when it next lands on his desk.

15. Most observers think the Government will select the second option, and early press backgrounding after the initial coalition consultations would seem to support that assessment. Resubmitting the legislation as-is to Ciampi would risk having it referred almost immediately to the

constitutional court (where a likely adverse ruling would prompt modifications to the law anyway) and renew domestic and international criticism of the Government's approach to press freedom and media pluralism. However, parliamentary fine-tuning is not without risk. Elements of the coalition, especially in the National Alliance, held their noses to approve the legislation, and others, especially Chamber President Casini, are wary of appearing to rubber-stamp legislation that inter alia benefits the Prime Minister. Moreover, with a "review" -- and possible reshuffle -- of the cabinet due in January (post-Italian EU presidency), ambitious coalition partners angling for more prominent roles, notably Deputy PM Fini, may set a steep price for their continuing collaboration on the media reform legislation.

16. First, though, the Government must figure out how to "save" two networks -- Mediaset's private Rete 4 network and the public RAI 3 -- from prior law and court rulings that effectively put both out of business on December 31. Rete 4 remains under judicial order to convert to satellite or digital transmissions beginning January 1, something it has not prepared to do. Under separate 1997 legislation passed by the center-left Dini Government, RAI's third channel legally will no longer be able to accept advertising on the same date, and there's no money in the national budget to offset the loss of revenue. The Government reportedly is contemplating a decree that would maintain the status quo for one or two months, providing a window during which Parliament could adjust the Gasparri legislation.

17. Comment: A popular and widely-respected President, Ciampi is well-attuned to the moods and undercurrents coursing through Italian society. In this case, he evidently decided public and private grumblings about the Gasparri law, spiced perhaps with some choice foreign commentary, merited suggesting that Parliament take another look at the legislation. This society still revolves principally around old, interlocking networks of family, friendship and business. Print media companies have been crying foul over the potential loss of advertising revenue that would flow to television absent the current advertising revenue caps. In this case, Ciampi appears to have heeded their calls, and those of the opposition, for another look at this legislation. In doing so, he also outmaneuvered the coalition by issuing his decision before the majority could pass pending conflict-of-interest legislation designed to defuse the opposition's charges. Ciampi's maneuver ultimately should not forestall, or alter substantially, the media liberalization package. But it is likely to raise its price for Berlusconi. End Comment.

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